

10-1-2010

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Pavan Mehrotra

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Recommended Citation

Pavan Mehrotra, *Back to the Basics: Why Traditional Principles of Personal Jurisdiction are Effective Today and Why Zippo Needs to Go*, 12 N.C. J.L. & TECH. 229 (2010).Available at: <http://scholarship.law.unc.edu/ncjolt/vol12/iss1/7>

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**BACK TO THE BASICS: WHY TRADITIONAL PRINCIPLES OF
PERSONAL JURISDICTION ARE EFFECTIVE TODAY AND WHY
ZIPPO NEEDS TO GO**

*Pavan Mehrotra**

*The exercise of personal jurisdiction is proper when someone has directed minimum contacts at a specific forum. Business conducted over the Internet complicates personal jurisdiction considerations because the boundaries of where one's conduct reaches are not always clear. In *Chloe v. Queen Bee of Beverly Hills, LLC*, the Second Circuit held that business activities directed toward a forum coupled with Web site transactions made personal jurisdiction proper in the distant forum. Courts are divided in the approach to be used to judge whether the exercise of personal jurisdiction is proper; some say traditional principles of personal jurisdiction are proper, while others support the sliding scale test from *Zippo Mfg. Co. v. Zippo DOT Com*. The Second Circuit's opinion is valuable for its clear reasoning, for its use of established principles in looking at the personal jurisdiction question and for providing a model that other courts can replicate in their jurisdictional analysis.*

I. INTRODUCTION

The Internet's popularity has risen rapidly in the past ten years, with over 230 million online users in the United States alone.¹ With its seemingly ubiquitous nature, Internet businesses are capitalizing on the large customer base by conducting transactions through their Web sites. A logical concern for courts is whether they could exercise personal jurisdiction over a party who conducts

* J.D. Candidate, University of North Carolina School of Law, 2012. I would like to thank my parents, Dr. Pankaj Mehrotra and Poonam Mehrotra, for their support and guidance while writing this article.

¹ *SuperPower: Visualising the Internet*, BBC NEWS, <http://news.bbc.co.uk/2/hi/technology/8552410.stm> (last visited Oct. 24, 2010).

business over the Internet based solely on the party's electronic presence in a forum.² In *Chloe v. Queen Bee of Beverly Hills, LLC*,³ the Second Circuit held that Web site transactions, when combined with business activities directed towards the forum, make the exercise of personal jurisdiction in New York proper.⁴ This decision thus clarifies the approach by which courts should consider questions of personal jurisdiction.

In determining personal jurisdiction, tension exists between traditional personal jurisdiction contacts which are based on one's actual, physical location, and the personal contacts arising from one's Internet activity. This tension arises because Internet contacts are not based on traditional personal jurisdiction principles such as sovereignty and territoriality.⁵ In *Zippo Mfg. Co. v. Zippo DOT Com*,⁶ a federal district court proposed a sliding scale test to determine when personal jurisdiction over Internet businesses was proper.⁷ The *Zippo* decision has been criticized by many commentators as destabilizing the law of personal jurisdiction in courts across the country.⁸ The decision in *Queen Bee* provides stability in personal jurisdiction by providing a clear analytical framework that is easily replicated.

This Recent Development will open with a discussion of the legal principles a court relies on in determining personal jurisdiction as well as a particular test, the *Zippo* sliding scale, applied to Internet businesses. Part III discusses the Second

² See *Instabook Corp. v. Instantpublisher.com*, 469 F. Supp. 2d 1120, 1125 (M.D. Fla. 2006) (describing how the standard for assessing whether personal jurisdiction is unclear, as many courts have adopted the *Zippo* test but its appeal is not universal).

³ 616 F.3d 158 (2d. Cir. 2010).

⁴ *Id.* at 165.

⁵ Catherine Ross Dunham, *Zippo-ing the Wrong Way: How the Internet Has Misdirected the Federal Courts in Their Personal Jurisdiction Analysis*, 43 U.S.F. L. REV. 559, 560 (2009); Daniel V. Logue, *If the International Shoe Fits, Wear It: Applying Traditional Personal Jurisdiction Analysis to Cyberspace in Compuserve, Inc. v. Patterson*, 42 VILL. L. REV. 1213, 1214 (1997) (arguing that cyberspace contacts do not "involve any contact with the physical world").

⁶ 952 F. Supp. 1119 (W.D. Pa. 1997).

⁷ *Id.* at 1124.

⁸ Dunham, *supra* note 5; *infra* note 77 and accompanying text.

Circuit's use of a traditional personal jurisdiction analysis to create a clear test for personal jurisdiction of Internet businesses and analyzes the *Queen Bee* test as the current model for analyzing personal jurisdiction. Part V contrasts the two approaches and shows how the court's analysis in *Queen Bee* is superior. Finally, this Recent Development predicts the effects the *Queen Bee* test will have on lawsuits involving Internet businesses and argues that, in the rapidly growing arena of Internet businesses, such an informative and illuminating decision is significant in providing guidance to other courts.

II. RELEVANT LAW—DUE PROCESS IN PERSONAL JURISDICTION

A. *Personal Jurisdiction Overview*

One of the first questions a court must consider when analyzing a federal question in a non-domiciliary case is whether it has personal jurisdiction over the parties.⁹ Without such jurisdiction, the court does not have the authority to hear and rule on the matter of law at issue. Thus, the proper determination of this threshold question is extremely important to the larger judicial framework.

A traditional personal jurisdiction analysis begins with the court applying the forum state's long-arm statute¹⁰ to determine if,

⁹ See *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475–476 (1985) (describing how, in a case where defendant corporation is suing two individuals for breach of a franchise agreement, determining whether defendants had a “substantial connection” with the forum state is an important first step in the suit); see generally *Genesis Ins. Co. v. Alfi*, 425 F. Supp. 2d 876, 881 (S.D. Ohio 2006) (describing the court beginning its decision with a personal jurisdiction analysis in a diversity case).

¹⁰ *Brian K. Epps, Maritz, Inc. v. Cybergold, Inc.: The Expansion of Personal Jurisdiction in the Modern Age of Internet Advertising*, 32 GA. L. REV. 237, 245 (1997) (looking at a state long-arm statute to determine whether there is authority to exert personal jurisdiction over a nonresident defendant); *Id.* at 245 n.57 (citing *Black's Law Dictionary* 942–43 (6th ed. 1990) (defining long-arm statutes as “various state legislative acts which provide for personal jurisdiction, via substituted service of process, over persons or corporations which are nonresidents of the state and which voluntarily go into the state, directly or by agent, or communicate with persons in the state, for limited purposes, in actions which concern claims relating to the performance or execution of those purposes”)).

under state law, the exercise of personal jurisdiction would be proper.¹¹ Next, the court must conduct a Due Process inquiry¹² by determining whether the defendant had minimum contacts with the forum¹³ and whether the exercise of personal jurisdiction by the court comports with reasonableness requirements.¹⁴

1. *The Minimum Contacts Inquiry*

Under the Due Process inquiry, the court will first examine the entirety of a defendant's contact with the forum state to determine whether the party had sufficient "minimum contacts" with the forum to make personal jurisdiction proper.¹⁵ Minimum contacts serve the dual purpose of insulating the defendant from the burden of litigating in an inconvenient forum and providing a check on state power by ensuring that the State does not reach beyond the limits imposed on it by a federal system of government.¹⁶

¹¹ See *Asahi Metal Indus. Co. v. Super. Ct. of Cal.*, 480 U.S. 102, 108–09 (1987) (describing the role of the long-arm statute's role in the personal jurisdiction analysis: "The Due Process Clause of the Fourteenth Amendment limits the power of a state court to exert personal jurisdiction over a nonresident defendant. '[The] constitutional touchstone' of the determination whether an exercise of personal jurisdiction comports with due process 'remains whether the defendant purposefully established 'minimum contacts' in the forum State.' ") (citing *Burger King*, 471 U.S. at 474) (quoting *Int'l Shoe Co. v. Wash.*, 326 U.S. 310, 316 (1945); see generally *Best Van Lines, Inc. v. Walker*, 490 F.3d 239, 244 (2d. Cir. 2007). Most long arm statutes provide for the exercise of jurisdiction to the maximum extent allowed by the federal Constitution. In *Chloe v. Queen Bee of Beverly Hills, LLC*, the New York long arm statute permits personal jurisdiction. 616 F.3d 158, 163 (2d. Cir. 2010).

¹² *Queen Bee*, 616 F.3d at 164.

¹³ *Burger King*, 471 U.S. at 462 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1979)) (explaining that purposeful availment occurs when a defendant has such a connection with a forum that "he should reasonably anticipate being haled into court there").

¹⁴ *Asahi*, 480 U.S. at 113 (quoting *Int'l Shoe*, 326 U.S. at 316) ("To be reasonable under the Due Process Clause means that the exercise of jurisdiction does not 'offend traditional notions of fair play and substantial justice.'").

¹⁵ *Queen Bee*, 616 F.3d at 164–65 (citing *Grand River Enters. Six Nations, Ltd. v. Pryor*, 425 F.3d 158, 166 (2d Cir. 2005) ("No single event or contact connecting defendant to the forum state need be demonstrated. . . .")); *Best Van Lines*, 490 F.3d at 242.

¹⁶ *World-Wide*, 444 U.S. at 292 ; see also *Burger King*, 471 U.S. at 471–72 (quoting *Int'l Shoe*, 326 U.S. at 319) ("The Due Process Clause protects an

Within the minimum contacts inquiry, courts will consider whether a defendant “purposefully availed” themselves of the benefit of conducting business in the forum state.¹⁷ Purposeful availment can be measured by the number of occasions that a party reaches out to another.¹⁸ As the Supreme Court notes, a continuing relationship is not necessary in order to find that a defendant purposefully directs their activities at the forum.¹⁹ For jurisdiction to be proper, it is enough for a defendant to “deliver its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum state.”²⁰

When a defendant has certain minimum contacts with a forum, they have met the Due Process requirements for personal jurisdiction.²¹ The minimum contacts inquiry continues with a determination of whether the court’s exercise of personal jurisdiction will stem from specific or general jurisdiction. A state exercises specific jurisdiction over a defendant when it bases personal jurisdiction in a case on the defendant’s contacts with the forum.²² General jurisdiction, on the other hand, is exercised on the basis of the defendant’s general business contacts; thus, the

individual’s liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful ‘contacts, ties, or relations.’”).

¹⁷ *Burger King*, 471 U.S. at 475; *Hanson v. Denckla*, 357 U.S. 235, 253 (1958) (“The application of that rule will vary with the quality and nature of the defendant’s activity, but it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.”).

¹⁸ *See Asahi*, 480 U.S. at 122 (Stevens, J., concurring) (contrasting purposeful availment with a “mere awareness” that a product will enter a forum).

¹⁹ *Burger King*, 471 U.S. at 473.

²⁰ *Id.* (quoting *World-Wide*, 444 U.S. at 297–98).

²¹ *Int’l Shoe*, 326 U.S. at 316 (noting that when minimum contacts are met, continuing with the suit does not offend “traditional notions of fair play and substantial justice” (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940))).

²² *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 418 (1983). Specific jurisdiction is exercised when a court presides over a defendant due to his contacts with the forum. *Id.* at 414.

court can exercise its power in a case that is unrelated to those general contacts.²³

2. *The Reasonableness Inquiry*

The second prong of the Due Process analysis asks whether the exercise of personal jurisdiction by the court is reasonable under the specific facts of the case.²⁴ In *Asahi Metal Indus. Co. v. Super. Ct. of Cal.*,²⁵ the Supreme Court held that courts must consider the following five factors as part of its reasonableness inquiry: (1) the burden on the defendant as a result of the exercise of jurisdiction; (2) the forum state's interest in having the case decided there; (3) the plaintiff's need to obtain convenient and effective assistance; (4) the interstate judiciary's interest in reaching an adequate resolution of the issue; and (5) the shared interests of the states involved in advancing important societal goals.²⁶ In assessing reasonableness, *Asahi* held that a court should weigh the forum state's interest in the case against the burden placed on the defendant as a result of litigating in a distant forum.²⁷ When a plaintiff has made a threshold showing of a defendant's minimum contacts, finding proper jurisdiction is favored unless the defendant points to compelling reasons, by way of the *Asahi* factors, why jurisdiction is unreasonable.²⁸

B. *Personal Jurisdiction in the Internet Era*

1. *The Zippo Test*

²³ *Id.* at 414–15.

²⁴ See *Int'l Shoe*, 326 U.S. at 316 (reasoning that whether personal jurisdiction is reasonable can depend on subjecting a defendant to a suit away from its principal place of business); *Milliken*, 311 U.S. at 463 (noting that a court wants to ensure that a defendant has sufficient minimum contacts such that jurisdiction does not offend “traditional notions of fair play and substantial justice”).

²⁵ 480 U.S. 102 (1987).

²⁶ *Id.* at 113–14. In a discussion of the application of the *Asahi* factors, the Second Circuit noted that the burden placed on the defendant must significantly outweigh the interests of the forum state or the forum state must have a slight interest in adjudicating the case; see *A. I. Trade Fin. v. Petra Bank*, 989 F.2d 76, 83 (2d Cir. 1993) (discussing an application of the *Asahi* factors).

²⁷ *Asahi*, 480 U.S. at 107.

²⁸ *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477 (1984).

In 1997, as the Internet was quickly gaining popularity, the court in *Zippo Mfg. Co. v. Zippo DOT Com*²⁹ established a sliding scale for determining personal jurisdiction in cases involving Internet business.³⁰ In *Zippo*, the District Court for the Western District of Pennsylvania faced the question of when business conducted over the Internet subjected a defendant to the jurisdiction of a forum at which his activities were directed.³¹ To answer this question, the court devised a sliding scale to measure the “nature and quality of commercial activity that an entity conducts over the Internet.”³² At one end of the scale is a defendant that clearly conducted business over the Internet, with a history of transactions and repeated transmission of files.³³ The other end of the spectrum implicates situations where a defendant merely posted information on a Web site which is accessible to users in other jurisdictions.³⁴ In the middle of the scale exists Web sites where a user can exchange information with the host computer; at this intersection courts must investigate the level of interactivity to determine whether the exercise of personal jurisdiction is proper.³⁵

2. *Widespread Use*

The *Zippo* sliding scale has been used by a number of courts across the country to determine whether the exercise of personal jurisdiction is proper in the Internet commerce context.³⁶ A recent

²⁹ 952 F. Supp. 1119 (W.D. Pa. 1997).

³⁰ *Id.* at 1124.

³¹ *Id.* at 1123.

³² *Id.* at 1124 (“Nevertheless, our review of the available cases and materials reveals that the likelihood that personal jurisdiction can be constitutionally exercised is directly proportionate to the nature and quality of commercial activity that an entity conducts over the Internet.”).

³³ *Id.*

³⁴ *Id.* (explaining how such passive Web sites cannot be grounds for the exercise of personal jurisdiction because they merely make information available).

³⁵ *Id.* The middle part of the scale is where the difficult questions arise and, indeed, where much of the in-depth analysis takes place. Dunham, *supra* note 5, at 572.

³⁶ See generally *Best Van Lines, Inc. v. Walker*, 490 F.3d 239, 252 (2d Cir. 2007) (indicating that several federal district courts in New York have applied

decision by a federal district court in Michigan, *Caldwell v. Cheapcaribbean.com, Inc.*,³⁷ shows the importance and weight that the *Zippo* scale is given in the personal jurisdiction analysis.³⁸ In *Caldwell*, the district court found that the Web site ran by the defendant offered a high degree of interactivity because it allowed customers to book vacations through the Web site and that contacts derived through the Web site with Michigan residents had been ongoing for a number of years.³⁹ The *Caldwell* decision is notable because it finds jurisdiction to be proper despite the fact that the plaintiff did not use the interactive features of the Web site to book her vacation; the court found the existence of an interactive Web site is sufficient to show purposeful availment.⁴⁰

Caldwell is just one example of how inconsistently the *Zippo* test has been applied and illustrates the unpredictable results that can occur from this inconsistency.⁴¹ Another case in which a federal district court applies the *Zippo* test is *ICG Am., Inc. v. Wine*

the *Zippo* test); *ALS Scan, Inc. v. Digital Service Consultants*, 293 F.3d 707, 714 (4th Cir. 2002); *Mink v. AAAA Dev. LLC*, 190 F.3d 333, 336 (5th Cir. 1999); *see, e.g., Revell v. Lidov*, 317 F.3d 467, 470 (5th Cir. 2002) (“This circuit has drawn upon the approach of *Zippo Manufacturing Co. v. Zippo Dot Com, Inc.* in determining whether the operation of an internet site can support the minimum contacts necessary for the exercise of personal jurisdiction.”); *ALS Scan*, 293 F.3d at 713 (“[W]e adopt today the model developed in *Zippo . . .*”).

³⁷ *Caldwell v. Cheapcaribbean.com, Inc.*, No. 2:09-CV-13828, 2010 U.S. Dist. LEXIS 93200, (E.D. Mich. Sept. 8, 2010). In *Caldwell*, plaintiff went on defendant’s Web site to view vacation accommodations and eventually ordered cruise tickets via a toll-free number posted on the Web site. *Id.* at *3.

³⁸ *Id.* at *17–19.

³⁹ *Id.* at *20. In describing the nature of the Web site:

There is evidence before the Court that during the time frame from January, 2006 to November 2009, up to 1% [of] Cheap Caribbean’s total number of bookings were made by Michigan residents. While this constitutes only a small portion of Cheap Caribbean’s overall business, these repeated commercial contacts with Michigan residents over a number of years constituted a conscious choice by Cheap Caribbean to conduct business with the residents of the state of Michigan.

Id.

⁴⁰ *Id.* at *23.

⁴¹ *Id.* at *22 (noting that the defendants argue that the Web site merely allows users to reserve third-party travel services).

of the Month Club, Inc.⁴² In *ICG*, plaintiff sold wine, beer, chocolates, and other goods to consumers using the phone and the Internet through its Web site.⁴³ Plaintiff sued for a declaratory judgment over the status of defendant's alleged trademark for "wine of the month club."⁴⁴ The *ICG* court applied *Zippo* and gave significant weight to the sliding scale: "Because Defendant's website sells its products, Defendant's website is interactive and commercial."⁴⁵ In finding the defendant's Web site to be interactive, the court did not lend credence to the small fraction of sales conducted in Connecticut.⁴⁶ While the *Zippo* test attempted to try and clarify the relationship of personal jurisdiction to the Internet, as the Internet has become more popular and more complicated, the *Zippo* sliding scale has proven unwieldy.⁴⁷

⁴² *ICG Am., Inc. v. Wine of the Month Club, Inc.*, No. 3:09-CV-133 (PCD), 2009 U.S. Dist. LEXIS 77151 (D. Conn. Aug. 24, 2009).

⁴³ *Id.* at *3.

⁴⁴ *Id.* at *2–5 ("This dispute concerns whether Plaintiff may continue to advertise the monthly wine products selections it offers on its Web sites using the phrases 'wine of the month club' and 'wine of the month' . . . Defendant is the record owner of U.S. Trademark Registration No. 1,500,846 for the mark: WINE OF THE MONTH CLUB, registered for 'mail order services in distribution of wine,' the record owner of U.S. Trademark Registration No. 2,881,828 for the mark: WINE OF THE MONTH CLUB, registered for 'newsletters pertaining to food and drink,' and the record owner of U.S. Trademark Registration No. 1,246,348 for the mark: WINE OF THE MONTH, registered for 'newsletters pertaining to food and drink.'" (citations omitted)).

⁴⁵ *Id.* at *11.

⁴⁶ *Id.* at *11–13. The Court noted the evidence in the case:

Plaintiff estimates Defendant's Connecticut-related sales to be approximately \$18,000 per year, which is one quarter of one percent of the low end of Defendant's estimated yearly revenues of \$7.2 million to \$9.5 million In any case, the dollar amount of Defendant's Connecticut sales is not dispositive of the jurisdictional question. Courts have found that a defendant's website, if it is active like the one in question here, need not produce significant dollar sales from forum residents in order for the court to find purposeful availment.

Id. (citing *Divicino v. Polaris Indus.*, 129 F. Supp. 2d 425, 434 (D. Conn. 2001); *Broad. Mktg. Int'l, Ltd. v. Prosource Sales & Mktg.*, 345 F. Supp.2d 1053, 1062 (D. Conn. 2004); *Stomp, Inc. v. Neato, LLC*, 61 F. Supp. 2d 1074, 1078 (D. Cal. 1999)).

⁴⁷ See *Zippo Mfg. Co. v. Zippo DOT Com*, 952 F. Supp. 1119, 1123–24 (1997) (fashioning a personal jurisdiction standard to the Internet); *Dunham*,

III. *CHLOE V. QUEEN BEE OF BEVERLY HILLS, LLC*

The *Queen Bee* decision addresses personal jurisdiction over Internet businesses, an area of the law that lacks a consistent and effective standard for approaching personal jurisdiction issues.⁴⁸ Chloe, a high-end fashion house with a presence in Europe, Asia, and North America,⁴⁹ was the plaintiff in *Queen Bee*.⁵⁰ Products manufactured by Chloe, including women's clothing and accessories, have a reputation for superior quality, are compared to brands such as Gucci and Burberry,⁵¹ and generally retail at high price points.⁵² The defendant in this case, Queen Bee of Beverly Hills, LLC, operated a Web site where users could purchase handbags purportedly manufactured by name-brand designers, including Chloe.⁵³ The Web site allowed customers to pay for the orders online using PayPal,⁵⁴ and Queen Bee offered to ship handbags anywhere in the continental United States.⁵⁵ In

supra note 5, at 573 ("In fact, the scale itself has led to more confusion as courts try to comprehensively wedge Internet-based contacts questions into the inadequate and poorly structured scale. . . .").

⁴⁸ See Dunham, *supra* note 5, at 560 (arguing that an approach taken by many courts, the *Zippo* sliding scale, has caused personal jurisdiction analysis to stray from its foundation); see also Zombeck v. Amada Co. Ltd., No. 06-953, 2007 U.S. Dist. LEXIS 84563, at *16 (W.D. Pa. Nov. 15, 2007) (describing how a Web site lacking commercial Internet activity is deemed a passive Web site without considering whether there was purposeful availment in the traditional sense of the forum state).

⁴⁹ CHLOE, <http://www.chloe.com/#/home/en> (last visited Oct. 24, 2010).

⁵⁰ *Chloe v. Queen Bee of Beverly Hills, LLC*, 616 F.3d 158, 161 (2d. Cir. 2010).

⁵¹ Wendy Donahue, *This Season's For the Ladies*, CHI. TRIB., Sept. 26, 2010, http://articles.chicagotribune.com/2010-09-26/features/sc-fash-1004-fall-trends-edited-20100926_1_burberry-jacket-hermes.

⁵² *Queen Bee*, 616 F.3d at 162.

⁵³ *Id.*; see David E. Sorkin, *Payment Methods For Consumer-To-Consumer Online Transactions*, 35 AKRON L. REV. 1, 11-12 (2001) (explaining that PayPal is a leading online payment service in which the seller and buyer transact a sale where the seller never sees the buyer's credit card or bank account number, and where the parties can choose what information to disclose). PayPal's Web site is located at: <https://www.paypal.com/>. See also *QUEEN BEE OF BEVERLY HILLS*, <http://www.queenbeebefeverlyhills.com/> (last visited Oct. 25, 2010).

⁵⁴ *Queen Bee*, 616 F.3d at 162.

⁵⁵ *Id.*

December 2005, at the direction of an attorney, an administrative assistant at Chloe's law firm placed an order through Queen Bee's Web site for a handbag to be sent to her in New York; the handbag which arrived was discovered to be a counterfeit.⁵⁶

The defendant in *Queen Bee* sold counterfeit Chloe handbags for \$1,200–\$400 dollars below the average retail price of authentic Chloe handbags. Additionally, the counterfeiters shipped their goods from Huntsville, Alabama, and Beverly Hills, where they also had showrooms.⁵⁷ During the course of its business, Queen Bee sold at least thirty-eight other Chloe bags across the country and made approximately fifty-two sales of non-Chloe products in New York.⁵⁸

Chloe filed a complaint in New York alleging violations of the Trademark Act of 1946.⁵⁹ This Act states, in part:

Any person who shall, without the consent of the registrant (a) use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; . . . shall be liable in a civil action by the registrant for the remedies hereinafter provided. Under subsection (b) hereof, the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such imitation is intended to be used to cause confusion, or to cause mistake, or to deceive.⁶⁰

⁵⁶ *Id.*; see also Shawn Mowry, *Part One: The Common Law, the States, and Historical Perspective: California Penal Laws: Mark Abuse*, 19 J. CONTEMP. LEGAL ISSUES 47, 52 (2010) (citing Cal. Penal Code § 350(e)(3)'s definition of counterfeit as "a spurious mark that is identical with, or confusingly similar to, a registered mark and is used, or intended to be used, on or in connection with the same type of goods or services for which the genuine mark is registered.").

⁵⁷ *Queen Bee*, 616 F.3d at 162.

⁵⁸ *Id.* at 163. Chloe first became aware of Queen Bee when it obtained documents arising out of a separate action against a distinct internet vendor located in Naperville, Illinois. *Id.* at 162. The vendor from this separate action had identified Queen Bee as its supplier; this action occurred in mid-December 2005. *Id.*

⁵⁹ *Id.* at 163.

⁶⁰ 15 U.S.C. § 1114(1) (2006).

With the rapid growth of Internet businesses, the law needs a standard built on structure and reason; otherwise, problems will continue to arise as courts struggle with addressing personal jurisdiction concerns in the Internet commerce context. There was a time when the Internet's rapid growth and ground-breaking nature led some to believe that it would not be subject to personal jurisdiction in the traditional meaning, but that a completely novel standard would have to be formulated to fit such an extraordinary medium.⁶¹

IV. *QUEEN BEE'S* TRADITIONAL ANALYSIS

The Second Circuit in *Queen Bee* chose not to follow the *Zippo* sliding scale analysis and instead applied the more traditional personal jurisdiction test discussed earlier. The court's personal jurisdiction analysis began with an investigation of the defendant's contacts with the state of New York.⁶² Queen Bee's Web site permitted New York consumers to purchase counterfeit Chloe handbags, and then Queen Bee shipped those bags into the state.⁶³ Additionally, seized documents indicated the defendants made sales in New York both through their Web site and in a variety of "trunk shows."⁶⁴ The court found that Queen Bee had contacts with New York, in part, on the basis of more than fifty sales of designer handbags into the state.⁶⁵ The Second Circuit applied traditional guidelines of personal jurisdiction to determine whether the New York courts had jurisdiction over Queen Bee, an Alabama

⁶¹ See Logue, *supra* note 5, at 1214 (stating that while personal jurisdiction is tied to concepts of territoriality, interaction in cyberspace is not subject to such boundaries).

⁶² *Queen Bee*, 616 F.3d at 166.

⁶³ *Id.*

⁶⁴ *Id.* (noting that an exhibit showed the occurrence of fifty-two separate transactions in which the defendants shipped their merchandise into New York); see also *Valjean Mfg. Inc. v. Michael Werdiger, Inc.*, No. 03 Civ. 6185 (HB), 2005 U.S. Dist. LEXIS 2139, at *4 (S.D.N.Y. Feb. 10, 2005) (describing a "trunk show" as an event where a salesperson travels to a retailer with a trunk of goods that the retailer does not normally sell).

⁶⁵ *Queen Bee*, 616 F.3d at 167 (noting that the sale of many handbags over time and not simply one transaction led to the conclusion that defendant had purposefully directed its activities at New York consumers).

corporation. In *Queen Bee*, Chloe alleged specific jurisdiction over the defendant.⁶⁶

After considering the defendant's contacts, the court turned to New York's long-arm statute and the Due Process Clause.⁶⁷ The state's long-arm statute permits jurisdiction when the defendant "transacts any business within the state or contracts anywhere to supply goods or services in the state."⁶⁸ In the first part of the Due Process analysis, the Second Circuit found sufficient minimum contacts because Queen Bee sold bags to New York consumers and because they offered bags for sale on their Web site.⁶⁹ The reasonableness inquiry that the court conducted determined whether jurisdiction over Queen Bee would follow the five factors set forth by the Supreme Court in *Asahi*.⁷⁰ Finding that personal jurisdiction was reasonable in New York, the court explained that the convenience of modern technology lessened the burden of litigating in a distant forum and the forum state had a "manifest interest in providing effective means of redress for its residents."⁷¹ Applying the more traditional personal jurisdiction analysis, the Second Circuit found that the long-arm statute was applicable, that there were sufficient contacts, and that New York's personal jurisdiction over Queen Bee was reasonable.⁷²

⁶⁶ *Id.* at 164.

⁶⁷ *Id.* at 169–173.

⁶⁸ *Id.* at 169 (citing N.Y. C.P.L.R. § 302(a)(1) (2010); *see also* Kreutter v. McFadden Oil Corp., 522 N.E.2d 40, 43 (N.Y. 1988) (claiming that section 302 [of the long-arm statute] "is a 'single act statute' and proof of one transaction in New York is sufficient to invoke jurisdiction, even though the defendant never enters New York, so long as the defendant's activities here were purposeful and there is a substantial relationship between the transaction and the claim asserted.")).

⁶⁹ *Queen Bee*, 616 F.3d at 171.

⁷⁰ *Id.* at 173. The factors are "[1] the burden on the defendant, [2] the interests of the forum State, and [3] the plaintiff's interest in obtaining relief. It must also weigh in its determination [4] the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and [5] the shared interest of the several States in furthering fundamental substantive social policies." *Id.*; *Asahi Metal Indus. Co. v. Super. Ct. of Cal.*, 480 U.S. 102, 113 (1987).

⁷¹ *Queen Bee*, 616 F.3d at 173 (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 483 (1985)).

⁷² *Id.*

V. ZIPPO V. QUEEN BEE

A. Problems of Zippo

In *Queen Bee*, the Second Circuit takes a bold step away from applying the *Zippo* scale and instead uses a more traditional framework to determine whether the exercise of jurisdiction comports with precedent.⁷³ Using the fundamentals of personal jurisdiction in deciding *Queen Bee* has its advantages over an approach that is “tailored” to changes in technology, as *Zippo* purports to do.⁷⁴ Developing a novel standard that captures the nuances and problems of personal jurisdiction that the Internet presents is extremely difficult.⁷⁵ The ever-changing nature of the Internet means that the appropriate standard for finding personal jurisdiction must have the flexibility to accommodate this change while also having a foundation or basis in relied-upon precedent.

Although many courts have embraced the *Zippo* sliding scale, there are a number of problems associated with the standard.⁷⁶ The *Zippo* scale fails to offer any real guidance when the degree of

⁷³ See *id.* at 169–173 (discussing the application of New York’s long-arm statute and then applying the Constitution’s Due Process Clause to determine whether exercising jurisdiction over the defendant would be proper). Indeed, the *Queen Bee* court does not mention *Zippo* once in its opinion.

⁷⁴ Dunham, *supra* note 5, at 573.

⁷⁵ A. Benjamin Spencer, *Jurisdiction and the Internet: Returning to Traditional Principles to Analyze Network-Mediated Contacts*, 2006 U. ILL. L. REV. 71, 88 (2006) (noting that underlying *Zippo* is the flawed presumption that “the Internet is sufficiently analogous to the conventional stream of commerce to warrant imposing standards developed for that sphere on the Internet.”); see *id.* (“[M]any courts espousing *Zippo*-based approaches have indicated concern that embracing Internet activity’s omnipresence would eliminate all limits on personal jurisdiction.”); *infra* note 91. But see *Mink v. AAAA Dev. LLC*, 190 F.3d 333, 336–337 (5th Cir. 1999) (adopting *Zippo* due to its persuasiveness, but finding that personal jurisdiction was not sufficient over the defendant because their Web site merely posted information about its services).

⁷⁶ See Dunham, *supra* note 5, at 560 (“The *Zippo* approach responded to a rising fear that if entities are able to contact citizens of the forum through the Internet alone, those contacts will fail the test of minimum contacts because Internet-based contacts can be disseminated so widely that purposeful availment with any particular forum is nonexistent.”).

interactivity and contact with a forum is ambiguous.⁷⁷ If a Web site lies in the middle portion of the scale, a defendant is still required to purposefully direct his activities at the forum in order for personal jurisdiction to be proper.⁷⁸ Another factor pointing to the *Zippo* scale's inadequacy lies on the foundations upon which it is built. In creating a new standard, the *Zippo* court failed to actually develop a novel approach to personal jurisdiction analysis.⁷⁹ The court in *Zippo* places too much weight on its understanding of the Internet and the Internet's function in determining personal jurisdiction.⁸⁰ The court believes the *Zippo* standard was going to govern "this global revolution looming on the horizon."⁸¹ Not really knowing what the Internet would bring in terms of changes in conducting business, the court develops what it thought to be a flexible and justified sliding scale standard.⁸² The *Zippo* court's approach and its subsequent application are flawed because they are based on the principle that Internet activity is so widespread that it is uncontrollable.⁸³ Instead of fearing the Internet's ubiquitous nature and placing artificial limits on where Internet business is directed, the defendant can

⁷⁷ David L. Stott, *Personal Jurisdiction in Cyberspace: The Constitutional Boundary of Minimum Contacts Limited to a Web Site*, 15 J. MARSHALL J. COMPUTER & INFO. L. 819, 843 (1997) (describing a concern of *Zippo* analysis in the middle part of the sliding scale as shown by the fact that many courts have drawn the line differently in their interpretation of "middle ground" and what additional activity is needed to provide for the exercise of personal jurisdiction).

⁷⁸ Dunham, *supra* note 5, at 575; see *Mink*, 190 F.3d at 337 (showing that the court used the *Zippo* sliding scale but a simple analysis of purposeful availment would have provided the same result). *But see* Toys "R" Us, Inc. v. Step Two, S.A., 318 F.3d 446, 452 (3d Cir. 2003) (describing the *Zippo* scale as very influential in shaping jurisdiction analysis over Internet businesses). See generally *S. Morantz, Inc. v. Hang & Shine Ultrasonics, Inc.*, 79 F. Supp. 2d 537, 540 (E.D. Pa. 1999); *ALS Scan Inc. v. Digital Serv. Consultants, Inc.*, 293 F.3d 707 (4th Cir. 2002) (citing several district court opinions and circuit court decisions, across the nation, which embrace the *Zippo* approach).

⁷⁹ Dunham, *supra* note 5, at 573.

⁸⁰ *Id.* at 569.

⁸¹ *Zippo Mfg. Co. v. Zippo DOT Com Inc.*, 952 F. Supp. 1119, 1123 (W.D. Pa. 1997).

⁸² *Id.* at 1124.

⁸³ Spencer, *supra* note 75, at 71.

overcome the ubiquity of the Internet by showing the steps it took to purposefully direct its activities at a specific forum.⁸⁴

Part of the confusion in applying the *Zippo* sliding scale to Internet activities arises because of *Zippo*'s puzzling determination of whether purposeful availment has occurred.⁸⁵ Courts and litigants often overlook communication between parties via electronic mail when deciding whether a party established minimum contacts with a forum.⁸⁶ For example, in *Dearwater v. Bond Mfg. Co.*,⁸⁷ the plaintiff in a wrongful termination suit acquired a job through a series of emails in response to advertisements on Craigslist and CareerBuilder.com.⁸⁸ Instead of asserting contact through electronic mail, the plaintiff's argument relied on its use of job search sites, which are included in the most interactive end of the *Zippo* scale.⁸⁹ The court used the Web site interaction as a basis to assert that jurisdiction over the defendant was proper.⁹⁰ Also, courts that place too much weight on the *Zippo* scale add to the uncertainty because they ignore evidence, such as placing products into the stream of commerce, which may show purposeful availment.⁹¹ Amid the confusion that the *Zippo* scale's

⁸⁴ *Id.* at 88 (noting how, under a traditional analysis, courts would additionally be required to determine whether the Internet activity in question meets the reasonableness requirements of the Due Process Clause).

⁸⁵ Dunham, *supra* note 5, at 576.

⁸⁶ *Id.*

⁸⁷ *Dearwater v. Bond Mfg. Co.*, No. 1:06-CV-154, 2007 WL 2745321 (D. Vt. Sept. 19, 2007).

⁸⁸ *Id.* at 1. The Web site addresses for Craigslist and CareerBuilder.com are <http://craigslist.org/> and <http://www.careerbuilder.com/>.

⁸⁹ *Dearwater*, 2007 WL 2745321, at *7.

⁹⁰ *Id.*

⁹¹ See *George Kessel Int'l, Inc. v. Classic Wholesales, Inc.*, No. CV-07-323-PHX-SMM, 2007 U.S. Dist. LEXIS 83261, at *5 (D. Ariz. Oct. 30, 2007) (holding that the defendant's Web site was on one end of the sliding scale as a passive Web site but ignoring other communications between the parties that had the potential to establish purposeful availment between the parties); *Roberts v. Paulin*, No. 07-CV-13207, 2007 U.S. Dist. LEXIS 80490, at *4-6 (E.D. Mich. Oct. 31, 2007) (applying the *Zippo* scale and saying the exercise of personal jurisdiction over the defendant was proper based on the amount of revenues procured from the forum, despite the defendant's lack of commercial contact and purposeful direction of activities at the forum). Courts also apply the *Zippo* scale in instances where the Web site in question is not commercial in nature.

adoption has caused, partly by its failure to comprehend the complexities that arise in its application, courts are left wondering what standard to apply.⁹²

B. *Why Queen Bee is Better*

1. *Doctrinal Stability*

Queen Bee has a solid foundation by virtue of its analysis of Internet contacts within the traditional personal jurisdiction framework.⁹³ The Second Circuit did what many commentators have suggested by viewing Internet business transactions using traditional principles;⁹⁴ the court considers the defendant's Web site interactions with New York in conjunction with the shipment of handbags into New York.⁹⁵ In other words, the fact that *Queen Bee* has a Web site is the starting point of the analysis, but not the end. The court looks at the manner in which the Web site directs activity towards New York—by having bags shipped into the forum from Beverly Hills—as part of the totality of the defendant's contacts with the state.⁹⁶

See, e.g., Chi. Architecture Found. v. Domain Magic, LLC, 2007 U.S. Dist. LEXIS 76226, at *1 (N.D. Ill. Oct. 12, 2007) (viewing the defendant's Web site, a illegal portal intended to steal the plaintiff's Web site hits, within the *Zippo* scale despite having no evidence of any commercial traffic between the plaintiff and defendant). *Id.* at *5.

⁹² *See* Dunham, *supra* note 5, at 573–74 (noting that while some courts have adopted the *Zippo* scale in its various forms, other courts are more cautious in their approach).

⁹³ *See* Spencer, *supra* note 75, at 104 (describing how the requirements of traditional principles of personal jurisdiction analysis apply to contacts arising out of Internet activity).

⁹⁴ *See* Dunham, *supra* note 5, at 578–79 (“The core of place theory is the understanding that for a defendant to be subject to personal jurisdiction within the forum, the defendant must have some contact with the territory of the forum.”); *see also* Spencer, *supra* note 75, at 104 (“[U]ntil Congress or the Supreme Court indicates that traditional analysis deserves alteration in the Internet context, courts should apply traditional principles.”).

⁹⁵ *Chloe v. Queen Bee of Beverly Hills, LLC*, 616 F.3d 158, 172 (2d Cir. 2010).

⁹⁶ *Id.*

The *Queen Bee* analysis replaces the ambiguous personal jurisdiction concepts from *Zippo*,⁹⁷ such as the interactivity of a Web site, with traditional principles of personal jurisdiction, such as purposeful availment and a substantial connection with the forum.⁹⁸ When a jurisdictional framework uses longstanding concepts such as minimum contacts in its analysis, courts have a large body of law to help guide them through the decision-making process.⁹⁹ With well-developed precedent to guide them, courts can easily adapt their decisions to meet the demands of a changing world, such as those found in cases involving Internet businesses.¹⁰⁰

2. *Flexibility in the Traditional Approach*

Queen Bee also provides for an accommodating, in terms of variation in fact patterns, approach, and the decision serves to effectively limit how far personal jurisdiction is exercised over Internet businesses. One way in which the impact of using a traditional approach to address personal jurisdiction issues improves the analysis is the flexibility it offers courts in considering relevant facts when deciding the issue of personal jurisdiction. A personal jurisdiction analysis is necessarily a fact-intensive inquiry as courts look at the details of business transactions to determine whether jurisdiction is proper in a particular forum.¹⁰¹ An established analytical approach can be

⁹⁷ Spencer, *supra* note 75, at 87 (arguing that interactivity has little or no relevance to whether the conduct at issue, which may include commercial activity or the misuse of intellectual property, has any impact on the issue of purposeful availment).

⁹⁸ *Queen Bee*, 616 F.3d at 171–73.

⁹⁹ See *Pennoyer v. Neff*, 95 U.S. 714, 720 (1877) (“Construing this latter provision to mean, that, in an action for money or damages where a defendant does not appear in the court, and is not found within the State, and is not a resident thereof, but has property therein, the jurisdiction of the court extends only over such property, the declaration expresses a principle of general, if not universal, law.”).

¹⁰⁰ See *Queen Bee*, 616 F.3d at 173 (describing how the court is able to easily integrate its analysis of the Web site sales into its determination of purposeful availment of the defendant).

¹⁰¹ Jayne S. Ressler, *Plausibly Pleading Personal Jurisdiction*, 82 TEMP. L. REV. 627, 655 (2009).

easily utilized by a court and its historical grounding provides a means to address various societal changes.¹⁰² A court is able to use the historical record to improve upon and benefit from the decisions of prior adjudications.

In *Queen Bee*, the Second Circuit establishes that a personal jurisdiction analysis using traditional principles is flexible and can accommodate changes in technology.¹⁰³ The approach taken in *Queen Bee* uses a core concept, purposeful availment of a particular forum, and applies it to electronic communication and Internet commerce.¹⁰⁴ An analytical framework, such as that used in *Zippo*, is unnecessary and indeed counterproductive when purposeful availment is effectively applied to Internet contacts.¹⁰⁵ Purposeful availment is measured by the number of instances or the manner in which one party reaches out to another.¹⁰⁶ If a defendant purposefully directs activities at a forum when shipping a handbag, then the same defendant purposefully directs activities by making Internet sales to residents of the forum.¹⁰⁷ Although the methods of communication have become more technologically advanced, the concept remains the same. The *Queen Bee* personal jurisdiction analysis properly uses traditional principles to determine whether the Internet business-defendant purposefully avails itself of the forum.¹⁰⁸

¹⁰² *Id.*

¹⁰³ See *Queen Bee*, 616 F.3d at 166–67 (explaining how sales by Queen Bee, through trunk sales and its Web site, reflect the defendant’s purposeful availment of New York); see also Dunham, *supra* note 5, at 580 (“The issue of purposeful availment has been measured in the modern context of remote communications, such as facsimile transmissions, telephone calls, mail order business, and other devices of commercial communication that allow parties to develop contacts without travel to the forum. When the framework relies on purposeful contacts to assess jurisdiction, it is able to adapt with technology.”).

¹⁰⁴ *Queen Bee*, 616 F.3d at 167.

¹⁰⁵ But see Carlos J.R. Salvado, *An Effective Personal Jurisdiction Doctrine for the Internet*, 12 U. BALT. INTELL. PROP. L.J. 75, 103 (2003) (indicating that the *Zippo* case has been cited positively by a variety of different courts).

¹⁰⁶ *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474–75 (1985).

¹⁰⁷ Dunham, *supra* note 5, at 559, 580.

¹⁰⁸ *Id.* at 580–81. See generally *id.* at 578 (“Devices now as commonplace as electronic mail were differentiated from posted mail and telephone calls because of electronic mail’s remoteness and inability to place persons in live contact

3. *Queen Bee's Guidance*

Queen Bee is valuable for the direction it gives to other courts in handling cases involving personal jurisdiction and Internet contacts. Simply by employing an analysis involving traditional personal jurisdiction principles, the Second Circuit is implicitly rejecting the *Zippo* sliding scale and providing a framework for other courts to use.¹⁰⁹ By clearly stating the steps required to determine whether New York had jurisdiction over *Queen Bee*, the court provides a guiding light in an area of the law that has been fractured by divergent opinions.¹¹⁰

VI. LIMITING PRINCIPLES

Queen Bee's constitutional check of personal jurisdiction is a useful and valuable tool for courts to employ in evaluating the fairness of exercising jurisdiction in particular circumstances. A criticism of the traditional personal jurisdiction analysis employed in *Queen Bee* is that the Internet is ubiquitous, and permitting Internet contacts to fulfill the purposeful availment requirement would force people who placed information on the Internet to be

with another . . . The early decisions identified the issue of Internet-based contacts as matters of first impression, distinct from the traditional personal jurisdiction case.”); Anindita Dutta, *I. Intellectual Property: C. Trademark: 2. Personal Jurisdiction: a) Minimum Contacts: Zippo Manufacturing Co. v. Zippo Dot Com, Inc.*, 13 BERKELEY TECH. L.J. 289, 300 (1998) (recounting that the *Zippo* court compared information passing over the Internet to a driver of a vehicle driving through different states and how this analogy was not very helpful; “A car is a physical entity that is completely within the control of the driver. Conversely, information on the Web is not tangible or even visible until downloaded onto a computer, and even then the user never knows exactly what server or access provider brought the information to her.”).

¹⁰⁹ See *Queen Bee*, 616 F.3d at 164 (describing the standard, the minimum contacts and reasonableness inquiry, which the court uses).

¹¹⁰ Dunham, *supra* note 5, at 577 (describing how *Zippo's* sliding scale is not based on traditional personal jurisdiction principles). See generally *George Kessel Int'l, Inc. v. Classic Wholesales, Inc.*, No. CV-07-323-PHXSM, 2007 WL 3208297, at *5 (D. Ariz. Oct. 30, 2007) (using the fact that the defendant's Web site was passive as dispositive of the issue of personal jurisdiction instead of looking at more traditional commercial activities that may have established purposeful availment).

subject to personal jurisdiction in every state.¹¹¹ However, this concern is unfounded because there is a constitutional check built into the traditional approach to limit such “universal jurisdiction.”¹¹² This is the reasonableness requirement that is part of the Due Process inquiry.¹¹³ The factors from *Asahi* will necessarily limit the scope of where the exercise of jurisdiction is proper.¹¹⁴ For example, when a state has little interest in the outcome of a dispute because the essence of state policies are not at stake, jurisdiction over the defendant may prove to be unreasonable.¹¹⁵ This constitutional check would prevent a company that ships products to every state from being subject to a lawsuit in every state.

The court in *Queen Bee* uses a second tool of personal jurisdiction analysis to effectively limit the “universal jurisdiction” problem. In its opinion, the Second Circuit “look[s] to the totality of Defendants’ contacts with the forum state.”¹¹⁶ By viewing the

¹¹¹ *ALS Scan Inc. v. Digital Serv. Consultants, Inc.*, 293 F.3d 707, 712 (4th Cir. 2002); see also Mark A. Lemley, *Place and Cyberspace*, 91 CAL. L. REV. 521, 529 (2003) (arguing that anyone with a Web site would be able to be sued anywhere in the country because they have sent their “product” into every forum); Note, *No Bad Puns: A Different Approach to the Problem of Personal Jurisdiction and the Internet*, 116 HARV. L. REV. 1821, 1822 (2003) (“In fact, faithful application of the usual test for personal jurisdiction arguably leads to the conclusion that maintaining a Web site constitutes purposeful availment of every state in the country. This phenomenon threatens to render the purposeful availment prong meaningless when Internet activities serve as the relevant contacts with the forum state.”).

¹¹² Spencer, *supra* note 75, at 104.

¹¹³ *Queen Bee*, 616 F.3d at 173.

¹¹⁴ *Asahi Metal Indus. Co. v. Super. Ct. of Cal.*, 480 U.S. 102, 113 (1987).

¹¹⁵ Spencer, *supra* note 75, at 106 (describing another situation where plaintiff has no relationship with the forum and, combined with defendant’s lack of connection with the forum outside of Internet contacts, jurisdiction may be unreasonable). But see *id.* at 107 (arguing that the reasonableness test of the Due Process inquiry permits judges to reach widely divergent decisions, thus undermining predictability and positing that reasonableness is not an effective check on limiting jurisdiction).

¹¹⁶ *Queen Bee*, 616 F.3d at 165 (citing *Grand River Enters. Six Nations Ltd. v. Pryor*, 425 F.3d 158, 166 (2d Cir. 2005)) (“No single event or contact connecting defendant to the forum state need be demonstrated; rather, the

defendants' contacts as a whole, the court limits the weight that a lone Internet transaction, for example, has in determining whether jurisdiction is proper.¹¹⁷ In this vein, the Second Circuit determines that the shipment of fifty-two items into New York combined with trunk show sales made jurisdiction in New York permissible.¹¹⁸ Finally, the Second Circuit considers whether these contacts were intentional. Only if the contacts are intentionally availed to that location will personal jurisdiction be found, and in *Queen Bee*, the contacts were intentional.¹¹⁹

VII. CONCLUSION

The Second Circuit's decision in *Chloe v. Queen Bee of Beverly Hills, LLC* is a return to a personal jurisdiction analysis utilizing traditional principles. *Queen Bee* is unique in that it is employing traditional principles of personal jurisdiction in an arena, Internet businesses, that is a shifting frontier and relatively new in its growth. The traditional framework for determining personal jurisdiction is well-equipped to handle the complexities the Internet presents. As shown by the Second Circuit's analysis, the conventional test is superior to the *Zippo* sliding scale because it offers flexibility in accommodating various fact patterns, provides valuable limitations to the exercise of jurisdiction, and provides a model for other courts. Courts should adopt the approach from *Queen Bee* and stop utilizing the *Zippo* standard. Personal jurisdiction over Internet businesses is a developing field in the law, and *Queen Bee* adds a decision to the body of law that is consistent and linear rather than one that is fractured and confusing. The law and judges need not customize the personal jurisdiction doctrine to technological changes associated with the Internet; the traditional framework is well-established and flexible enough to accommodate advances in the technology frontier.

totality of all defendant's contacts with the forum state must indicate that the exercise of jurisdiction would be proper.”).

¹¹⁷ *Queen Bee*, 616 F.3d at 165.

¹¹⁸ *Id.* at 166.

¹¹⁹ See Logue, *supra* note 5, at 1252 (noting that limiting personal jurisdiction to instances in which the defendant intentionally creates contacts with the forum helps ensure that people are not subject to jurisdiction anywhere in the world).